

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ANTHONY ROBERT TIRADO,  
Petitioner,  
v.  
TIMOTHY TAYLOR,  
Respondent.

Case No. 1:24-cv-01069-SAB-HC

**FINDINGS AND RECOMMENDATION TO  
DISMISS PETITION FOR WRIT OF  
HABEAS CORPUS**

**ORDER DIRECTING CLERK OF COURT  
TO RANDOMLY ASSIGN DISTRICT  
JUDGE**

Petitioner is a federal prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

I.

## BACKGROUND

Petitioner is currently incarcerated at the Federal Correctional Institution in Mendota, California, serving a sentence imposed by the United States District Court for the Southern District of Alabama. (ECF No. 1 at 1.<sup>1</sup>) On September 9, 2024, Petitioner filed the instant petition for writ of habeas corpus. Therein, Petitioner asserts that he is in custody in violation of the Fourth and Fifth Amendments because Congress has classified marijuana as a dangerous substance without compelling reasons. (Id. at 5.)

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<sup>1</sup> Page numbers refer to the ECF page numbers stamped at the top of the page.

II.

## DISCUSSION

3 Rule 4 of the Rules Governing Section 2254 Cases<sup>2</sup> requires preliminary review of a  
4 habeas petition and allows a district court to dismiss a petition before the respondent is ordered  
5 to file a response, if it “plainly appears from the petition and any attached exhibits that the  
6 petitioner is not entitled to relief in the district court.” Rule 4, Rules Governing Section 2254  
7 Cases in the United States District Courts, 28 U.S.C. foll. § 2254.

8 A federal prisoner who wishes to challenge the validity or constitutionality of his federal  
9 conviction or sentence must do so by moving the court that imposed the sentence to vacate, set  
10 aside, or correct the sentence under 28 U.S.C. § 2255. Alaimalo v. United States, 645 F.3d 1042,  
11 1046 (9th Cir. 2011). “The general rule is that a motion under 28 U.S.C. § 2255 is the exclusive  
12 means by which a federal prisoner may test the legality of his detention, and that restrictions on  
13 the availability of a § 2255 motion cannot be avoided through a petition under 28 U.S.C.  
14 § 2241.” Stephens v. Herrera, 464 F.3d 895, 897 (9th Cir. 2006) (citations omitted).

15 Nevertheless, a “savings clause” or “escape hatch” exists in § 2255(e) by which a federal  
16 prisoner may seek relief under § 2241 if he can demonstrate the remedy available under § 2255  
17 to be “inadequate or ineffective to test the validity of his detention.” Alaimalo, 645 F.3d at 1047  
18 (internal quotation marks omitted) (quoting 28 U.S.C. § 2255); Harrison v. Ollison, 519 F.3d  
19 952, 956 (9th Cir. 2008); Hernandez v. Campbell, 204 F.3d 861, 864–65 (9th Cir. 2000) (per  
20 curiam). The Ninth Circuit has recognized that it is a very narrow exception. See Ivy v. Pontesso,  
21 328 F.3d 1057, 1059 (9th Cir. 2003). The remedy under § 2255 usually will not be deemed  
22 inadequate or ineffective merely because a prior § 2255 motion was denied, or because a remedy  
23 under § 2255 is procedurally barred. Id. The burden is on the petitioner to show that the remedy  
24 is inadequate or ineffective. Redfield v. United States, 315 F.2d 76, 83 (9th Cir. 1963).

25 "An inquiry into whether a § 2241 petition is proper under these circumstances is critical  
26 to the determination of district court jurisdiction" because § 2241 petitions must be heard in the

<sup>27</sup> The Rules Governing Section 2254 Cases apply to § 2241 habeas petitions. See Rule 1(b) of the Rules Governing Section 2254 Cases (“The district court may apply any or all of these rules to a habeas corpus petition not covered by” 28 U.S.C. § 2254.).

1 custodial court while § 2255 motions must be heard in the sentencing court. Hernandez, 204 F.3d  
2 at 865. If the instant petition is properly brought under 28 U.S.C. § 2241, it may be heard in this  
3 Court. Conversely, if the instant petition is in fact a disguised § 2255 motion, it must be heard in  
4 the United States District Court for the Southern District of Alabama as the sentencing court.

5 A petitioner may proceed under § 2241 pursuant to the escape hatch when the petitioner  
6 “(1) makes a claim of actual innocence, and (2) has not had an ‘unobstructed procedural shot’ at  
7 presenting that claim.” Stephens, 464 F.3d at 898 (citing Ivy, 328 F.3d at 1060). In the Ninth  
8 Circuit, a claim of actual innocence for purposes of the § 2255 escape hatch is tested by the  
9 standard articulated by the Supreme Court in Bousley v. United States, 523 U.S. 614 (1998).  
10 Stephens, 464 F.3d at 898. In Bousley, the Supreme Court explained that “[t]o establish actual  
11 innocence, petitioner must demonstrate that, in light of all the evidence, it is more likely than not  
12 that no reasonable juror would have convicted him.” 523 U.S. at 623 (internal quotation marks  
13 and citation omitted). Furthermore, “actual innocence means factual innocence, not mere legal  
14 insufficiency.” Id. “In determining whether a petitioner had an unobstructed procedural shot to  
15 pursue his claim, we ask whether petitioner’s claim ‘did not become available’ until after a  
16 federal court decision. In other words, we consider: (1) whether the legal basis for petitioner’s  
17 claim ‘did not arise until after he had exhausted his direct appeal and first § 2255 motion;’ and  
18 (2) whether the law changed ‘in any way relevant’ to petitioner’s claim after that first § 2255  
19 motion.” Harrison, 519 F.3d at 960 (citations omitted)).

20 Here, Petitioner challenges Congress’s classification of marijuana as a dangerous  
21 substance. Petitioner does not make a claim of actual innocence, which requires Petitioner to  
22 “demonstrate that, in light of all the evidence, it is more likely than not that no reasonable juror  
23 would have convicted him.” Bousley, 523 U.S. at 623 (internal quotation marks and citation  
24 omitted). Moreover, Petitioner has not established that he has not had an unobstructed procedural  
25 shot at presenting his claim previously because “a *change* in the law create[ed] a previously  
26 unavailable legal basis for petitioner’s claim.” Harrison, 519 F.3d at 961 (citing Ivy, 328 F.3d at  
27 1060).  
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III.

## **RECOMMENDATION & ORDER**

3       Based on the foregoing, the Court HEREBY RECOMMENDS that the petition for writ of  
4 habeas corpus be DISMISSED.

5       Further, the Clerk of Court is DIRECTED to randomly assign this action to a District  
6       Judge.

7 This Findings and Recommendation is submitted to the assigned United States District  
8 Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local  
9 Rules of Practice for the United States District Court, Eastern District of California. Within  
10 **THIRTY (30) days** after service of the Findings and Recommendation, Petitioner may file  
11 written objections with the Court, **limited to fifteen (15) pages in length, including any**  
12 **exhibits**. Such a document should be captioned “Objections to Magistrate Judge’s Findings and  
13 Recommendation.” The assigned United States District Court Judge will then review the  
14 Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636(b)(1)(C). The parties are advised that  
15 failure to file objections within the specified time may waive the right to appeal the District  
16 Court’s order. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v.  
17 Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: **October 8, 2024**



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**UNITED STATES MAGISTRATE JUDGE**